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10 CALIFORNIA ADMINISTRATIVE OFFICE OF THE COURTS

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14
15 LUCIA KANTER,

16 Plaintiff,

17 v.

18 CALIFORNIA ADMINISTRATIVE
19 OFFICE OF THE COURTS,

20 Defendant.

Case No.: C 07 2423 MJJ

**DEFENDANT'S AMENDED
ANSWER TO PLAINTIFF'S
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

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Heller
Ehrman LLP

1 Defendant California Administrative Office of the Courts (“AOC” or “Defendant”),
2 provide this amended response to Plaintiff Lucia Kanter’s (“Plaintiff”) Complaint¹ as
3 follows.

4 NATURE OF THE ACTION

5 1. Defendant is informed and believes and, on that basis, admits that this is an
6 individual employment action brought by Plaintiff against her former employer, Defendant.

7 2. Defendant denies taking any unlawful action against Plaintiff. To the extent that the
8 remaining allegations contained in Paragraph 2 of Plaintiff’s Complaint are legal conclusions and
9 contain no factual allegations, Defendant is not required to, and does not, admit or deny such
10 allegations.

11 3. Paragraph 3 of Plaintiff’s Complaint contains no factual allegations.

12 PARTIES

13 4. Defendant is informed and believes and, on that basis, admits that Plaintiff resided in
14 the City and County of San Francisco, California. Defendant admits that Plaintiff was employed by
15 Defendant in its San Francisco Headquarters Office. Defendant denies taking any unlawful action
16 against Plaintiff. The remaining allegations in Paragraph 4 of Plaintiff’s Complaint are legal
17 conclusions and contain no factual allegations. Defendant is not required to, and does not, admit or
18 deny such allegations.

19 5. Defendant admits that it is and at all relevant times was the staff agency to the
20 Judicial Council of California, headquartered in San Francisco, California. Defendant also admits
21 that it had in excess of fifty employees throughout Plaintiff’s employment. The remaining
22 allegations in Paragraph 5 of Plaintiff’s Complaint are legal conclusions and contain no factual
23 allegations. Defendant is not required to, and does not, admit or deny such allegations.

24 EXHAUSTION OF REMEDIES

25 6. Defendant is informed and believes, and on that basis admits, that Plaintiff filed a
26 charge of discrimination with the Equal Employment Opportunity Commission, and that the United

27
28 ¹ Plaintiff’s Complaint does not contain a fifth, eighth or ninth claim for relief.

1 States Department of Justice issued a notice of Plaintiff's right to sue on or about January 30, 2007.
2 Defendant is without sufficient knowledge or information to admit or deny the remaining
3 allegations contained in Paragraph 6 of Plaintiff's Complaint, and on that basis denies such
4 allegations.

5 JURISDICTION

6 7. To the extent that the allegations contained in Paragraph 7 of Plaintiff's Complaint
7 are legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
8 admit or deny such allegations.

9 STATEMENT OF FACTS

10 8. Defendant is informed and believes, and on that basis admits, that Plaintiff is an
11 attorney and was admitted to the Bar of the State of California in 1998. Defendant also admits that
12 it hired Plaintiff on or about April 29, 2002 to work in the Labor and Employment Unit of
13 Defendant's Office of the General Counsel. Further, Defendant admits that during the relevant time
14 period it employed approximately 600 individuals, approximately 75 of whom worked in the Office
15 of the General Counsel. Except as expressly so admitted, Defendant denies each and every
16 allegation contained in Paragraph 8 of Plaintiff's Complaint.

17 9. Defendant admits that Plaintiff took a leave of absence for the birth of her first child,
18 beginning on or about December 16, 2003, and that Plaintiff took a leave of absence for the birth of
19 her second child, beginning on or about September 9, 2005. Defendant also admits that it granted
20 Plaintiff's request to work an 80% schedule, beginning on or about November 30, 2004. Except as
21 expressly so admitted, Defendant denies each and every allegation contained in Paragraph 9 of
22 Plaintiff's Complaint.

23 10. Defendant admits that on or about January 3, 2006, it received notice of Plaintiff's
24 request for a modified work schedule. Except as so expressly admitted, Defendant denies each and
25 every allegation contained in Paragraph 10 of Plaintiff's Complaint.

26 11. Defendant denies each and every allegation contained in Paragraph 11 of Plaintiff's
27 Complaint.

28 12. Defendant admits that on or about February 15, 2006, it received notice of Plaintiff's

1 request for an extended leave of absence due to her son's diagnosis with autism. Defendant further
2 admits that on or about February 27, 2006, it denied Plaintiff request for an extended leave of
3 absence. Except as so expressly admitted, Defendant denies each and every allegation contained in
4 Paragraph 12 of Plaintiff's Complaint.

5 13. Defendant admits that on or about February 28, 2006, it received notice of Plaintiff's
6 request for additional time off beyond her scheduled return date of March 15, 2006, and that
7 Defendant denied this request. Except as so expressly admitted, Defendant denies each and every
8 allegation contained in Paragraph 13 of Plaintiff's Complaint.

9 14. Defendant admits that on or about March 3, 2006, Plaintiff protested Defendant's
10 denial of her request for additional time off. Except as so expressly admitted, Defendant denies
11 each and every allegation contained in Paragraph 14 of Plaintiff's Complaint.

12 15. Defendant denies each and every allegation contained in Paragraph 15 of Plaintiff's
13 Complaint.

14 16. Defendant admits that on or about March 13, 2006, it notified Plaintiff that she was
15 being terminated effective March 15, 2006. Except as so expressly admitted, Defendant denies
16 each and every allegation contained in Paragraph 16 of Plaintiff's Complaint.

17 17. Defendant denies each and every allegation contained in Paragraph 17 of Plaintiff's
18 Complaint. To the extent that the allegations contained in Paragraph 17 of Plaintiff's Complaint are
19 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
20 admit or deny such allegations.

21 18. Defendant denies each and every allegation contained in Paragraph 18 of Plaintiff's
22 Complaint.

23 19. Defendant is without sufficient knowledge or information to admit or deny the
24 allegations contained in Paragraph 19 of Plaintiff's Complaint, and on that basis denies each and
25 every allegation contained in Paragraph 19 of Plaintiff's Complaint.

FIRST CLAIM FOR RELIEF

**(Disability Discrimination Based on Association with a Disabled Person Cal. Gov't
Code § 12926(m) & 12940)**

20. Defendant incorporates by reference its allegations, admissions and denials as set forth in Paragraphs 1 through 19, inclusive.

21. To the extent that the allegations contained in Paragraph 21 of Plaintiff's Complaint are legal conclusions and contain no factual allegations, Defendant is not required to, and does not, admit or deny such allegations.

22. To the extent that the allegations contained in Paragraph 22 of Plaintiff's Complaint are legal conclusions and contain no factual allegations, Defendant is not required to, and does not, admit or deny such allegations.

23. To the extent that the allegations contained in Paragraph 23 of Plaintiff's Complaint are legal conclusions and contain no factual allegations, Defendant is not required to, and does not, admit or deny such allegations.

24. To the extent the allegations contained in Paragraph 24 of Plaintiff's Complaint are legal conclusions and contain no factual allegations, Defendant is not required to, and does not, admit or deny such allegations.

25. Defendant denies each and every allegation contained in Paragraph 25 of Plaintiff's Complaint.

26. Defendant denies each and every allegation contained in Paragraph 26 of Plaintiff's Complaint.

As to Plaintiff's Prayer for Relief, Defendant denies that Plaintiff was injured in any amount or at all, and further denies that Plaintiff is entitled to relief of any form on any of her claims against Defendant.

SECOND CLAIM FOR RELIEF

**(Disability Discrimination Based on Association with a Disabled Person Americans
with Disabilities Act, 42 U.S. C. § 12112)**

27. Defendant incorporates by reference its allegations, admissions and denials as set

1 forth in Paragraphs 1 through 26, inclusive.

2 28. To the extent the allegations contained in Paragraph 28 of Plaintiff's Complaint are
3 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
4 admit or deny such allegations.

5 29. To the extent the allegations contained in Paragraph 29 of Plaintiff's Complaint are
6 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
7 admit or deny such allegations.

8 30. To the extent that the allegations contained in Paragraph 30 of Plaintiff's Complaint
9 are legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
10 admit or deny such allegations.

11 31. To the extent the allegations contained in Paragraph 31 of Plaintiff's Complaint are
12 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
13 admit or deny such allegations.

14 32. Defendant denies each and every allegation contained in Paragraph 32 of Plaintiff's
15 Complaint.

16 33. Defendant denies each and every allegation contained in Paragraph 33 of Plaintiff's
17 Complaint.

18 As to Plaintiff's Prayer for Relief, Defendant denies that Plaintiff was injured in any amount
19 or at all, and further denies that Plaintiff is entitled to relief of any form on any of her claims against
20 Defendant.

21 **THIRD CLAIM FOR RELIEF**

22 **(Gender Discrimination, Cal. Gov't Code § 12940(a))**

23 34. Defendant incorporates by reference its allegations, admissions and denials as set
24 forth in Paragraphs 1 through 33, inclusive.

25 35. To the extent the allegations contained in Paragraph 35 of Plaintiff's Complaint are
26 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
27 admit or deny such allegations.

28 36. To the extent the allegations contained in Paragraph 36 of Plaintiff's Complaint are

1 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
2 admit or deny such allegations.

3 37. To the extent that the allegations contained in Paragraph 37 of Plaintiff's Complaint
4 are legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
5 admit or deny such allegations.

6 38. To the extent the allegations contained in Paragraph 38 of Plaintiff's Complaint are
7 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
8 admit or deny such allegations.

9 39. Defendant denies each and every allegation contained in Paragraph 39 of Plaintiff's
10 Complaint.

11 40. Defendant denies each and every allegation contained in Paragraph 40 of Plaintiff's
12 Complaint.

13 As to Plaintiff's Prayer for Relief, Defendant denies that Plaintiff was injured in any amount
14 or at all, and further denies that Plaintiff is entitled to relief of any form on any of her claims against
15 Defendant.

16 **FOURTH CLAIM FOR RELIEF**

17 **(Gender Discrimination, Title VII, Civil Rights Act of 1964, § 701 *et seq.* 42 U.S.C.**

18 **§ 2000e *et seq.*)**

19 41. Defendant incorporates by reference its allegations, admissions and denials as set
20 forth in Paragraphs 1 through 40, inclusive.

21 42. To the extent the allegations contained in Paragraph 42 of Plaintiff's Complaint are
22 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
23 admit or deny such allegations.

24 43. To the extent the allegations contained in Paragraph 43 of Plaintiff's Complaint are
25 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
26 admit or deny such allegations.

27 44. To the extent the allegations contained in Paragraph 44 of Plaintiff's Complaint are
28 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,

1 admit or deny such allegations.

2 45. To the extent the allegations contained in Paragraph 45 of Plaintiff's Complaint are
3 legal conclusions and contain no factual allegations, Defendant is not required to, and does not,
4 admit or deny such allegations.

5 46. Defendant denies each and every allegation contained in Paragraph 46 of Plaintiff's
6 Complaint.

7 47. Defendant denies each and every allegation contained in Paragraph 47 of Plaintiff's
8 Complaint.

9 As to Plaintiff's Prayer for Relief, Defendant denies that Plaintiff was injured in any amount
10 or at all, and further denies that Plaintiff is entitled to relief of any form on any of her claims against
11 Defendant.

12 **SIXTH CLAIM FOR RELIEF**

13 **(Retaliation, Cal. Gov't Code § 12950(h))**

14 48. Defendant incorporates by reference its allegations, admissions and denials as set
15 forth in Paragraphs 1 through 47, inclusive.

16 49. Defendant denies each and every allegation contained in Paragraph 49 of Plaintiff's
17 Complaint.

18 50. Defendant denies each and every allegation contained in Paragraph 50 of Plaintiff's
19 Complaint.

20 51. Defendant denies each and every allegation contained in Paragraph 51 of Plaintiff's
21 Complaint.

22 As to Plaintiff's Prayer for Relief, Defendant denies that Plaintiff was injured in any amount
23 or at all, and further denies that Plaintiff is entitled to relief of any form on any of her claims against
24 Defendant.

25 **SEVENTH CLAIM FOR RELIEF**

26 **(Violation of Equal Protection and Civil Rights, 42 U.S.C. § 1983)**

27 52. Defendant incorporates by reference its allegations, admissions and denials as set
28 forth in Paragraphs 1 through 51 inclusive.

1 and Tenth Claims for Relief, Defendant alleges:

2 1. Plaintiff has failed to state facts sufficient to constitute a cause of action.

3 **SECOND AFFIRMATIVE DEFENSE**

4 As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh
5 and Tenth Claims for Relief, Defendant alleges:

6 2. Plaintiff's claims are barred, in whole or in part, by the applicable Statute of
7 Limitations including, but not limited to, California Code of Civil Procedure Sections 335.1, 337,
8 338, 339, 340 and/or 343, Government Code Section 12940, *et seq.*, and/or 42 United States Code
9 Section 2000e-5(f)(1).

10 **THIRD AFFIRMATIVE DEFENSE**

11 As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth and Tenth
12 Claims for Relief, Defendant alleges:

13 3. Plaintiff has failed, in whole or in part, to exhaust her administrative remedies in a
14 timely manner.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh
17 and Tenth Claims for Relief, Defendant alleges:

18 4. Plaintiff's claims are barred for failure to exhaust available internal remedies.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh
21 and Tenth Claims for Relief, Defendant alleges:

22 5. Defendant exercised reasonable care to prevent and correct promptly any alleged
23 unlawful behavior and Plaintiff failed to take advantage of preventive and corrective opportunities
24 offered by Defendant and/or otherwise to avoid harm.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh
27 and Tenth Claims for Relief, Defendant alleges:

28 6. Plaintiff failed to take reasonable steps to avoid harm.

SEVENTH AFFIRMATIVE DEFENSE

As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh and Tenth Claims for Relief, Defendant alleges:

7. Plaintiff has failed, and continues to fail, to take reasonable steps to mitigate her damages.

EIGHTH AFFIRMATIVE DEFENSE

As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh and Tenth Claims for Relief, Defendant alleges:

8. This Court lacks jurisdiction over any claim by Plaintiff for alleged mental, emotional and/or physical distress on the grounds that such claims are subject to the exclusive provisions of the California Workers' Compensation laws. Cal. Labor Code § 3600, *et seq.*

NINTH AFFIRMATIVE DEFENSE

As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh and Tenth Claims for Relief, Defendant alleges:

9. Plaintiff failed, in whole or in part, to comply with her obligations under California Labor Code Sections 2854 and 2856.

TENTH AFFIRMATIVE DEFENSE

As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh and Tenth Claims for Relief, Defendant alleges:

10. All of the alleged acts and conduct of Defendant of which Plaintiff complains were privileged and/or justified under the managerial privilege.

ELEVENTH AFFIRMATIVE DEFENSE

As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh and Tenth Claims for Relief, Defendant alleges:

11. Plaintiff's claims are barred, in whole or in part, by the doctrines of unclean hands, laches, estoppel, and/or waiver.

TWELFTH AFFIRMATIVE DEFENSE

As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh

1 and Tenth Claims for Relief, Defendant alleges:

2 12. Defendant's actions with respect to Plaintiff's employment were made without
3 malice, in good faith, and for legitimate, non-discriminatory business reasons.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh
6 and Tenth Claims for Relief, Defendant alleges:

7 13. Any and all acts, occurrences and damages alleged or referred to in Plaintiff's
8 Complaint were proximately caused by the bad faith of Plaintiff in that Plaintiff failed to deal fairly,
9 honestly and reasonably with Defendant; therefore, the comparative bad faith of Plaintiff reduces
10 her right to recovery, if any, in the amount by which her bad faith contributed to the damages
11 alleged.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
14 Defendant alleges:

15 14. Defendant reasonably accommodated Plaintiff, and any further accommodations
16 would have resulted in undue hardship to Defendant.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 As and for an affirmative defense to Plaintiff's First and Second Claims for Relief,
19 Defendant alleges:

20 15. Plaintiff's son is not a "qualified" individual with a disability, as defined in the Fair
21 Employment and Housing Act ("FEHA") and its implementing regulations.

22 **SIXTEENTH AFFIRMATIVE DEFENSE**

23 As and for an affirmative defense to Plaintiff's First, Second, Third, Sixth, Seventh and
24 Tenth Claims for Relief, Defendant alleges:

25 16. Plaintiff's claims are barred by sovereign immunity and/or the Eleventh Amendment
26 to the United States Constitution. U.S. Const. amend. XI.

27 **SEVENTEENTH AFFIRMATIVE DEFENSE**

28 As and for an affirmative defense to Plaintiff's First, Second, Third, Fourth, Sixth, Seventh

1 and Tenth Claims for Relief, Defendant alleges:

2 17. Defendant presently has insufficient knowledge or information on which to form a
3 belief as to whether it has or may have additional, as yet unstated, defenses available. Defendant
4 reserves the right to assert additional affirmative defenses in the event discovery indicates that they
5 would be appropriate.

6 WHEREFORE Defendant prays:

- 7 1. That Plaintiff's Complaint be dismissed in its entirety;
8 2. That Plaintiff take nothing by her Complaint;
9 3. That Defendant be awarded attorneys' fees and its costs of suit; and
10 4. That Defendant be granted such other and further relief as this Court may deem
11 appropriate.

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13 DATED: August 28, 2007

14 Respectfully submitted,

15 HELLER EHRMAN LLP
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17 By /S/ Brooke D. Andrich
18 PATRICIA K. GILLETTE
19 GREG J. RICHARDSON
20 BROOKE D. ANDRICH
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23 THE COURTS
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